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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection and	)	MM Docket No. 92-259
Competition Act of 1992	)	
	)	
Broadcast Signal Carriage Issues	)	

COMMENTS OF
ADELPHIA COMMUNICATIONS CORPORATION; ARIZONA CABLE TELEVISION ASSOCIATION; CABLE TV OF GEORGIA; CABLE VIDEO ENTERPRISES; COAXIAL COMMUNICATIONS, INC.; HAUSER COMMUNICATIONS; MID-AMERICA CABLE TELEVISION ASSOCIATION; MOUNT VERNON CABLEVISION, INC.; NASHOBA COMMUNICATIONS LIMITED PARTNERSHIP; PENNSYLVANIA CABLE TELEVISION ASSOCIATION; PRESTIGE CABLE TV; STAR CABLE ASSOCIATES; TELE-MEDIA CORPORATION; WESTSTAR COMMUNICATIONS, INC.; AND WHITCOM INVESTMENT COMPANY

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I. **Must-Carry.**

In implementing a requirement for carriage of qualified, local noncommercial educational stations ("NCE"), the Commission must ensure that carriage obligations do not conflict with existing rule requirements. A cable system should be able to carry a translator of an NCE station where, for example, the translator provides a better quality signal to the cable operator's principal headend. However, a cable system should never be required to carry both an NCE station and a translator carrying that station.

The location and definition of the term "principal headend" is an important issue for making the determination of whether a qualified NCE station must be carried. Cable operators should be able to specify the location of their own principal headends.

In defining the term "substantially duplicated" for NCE stations Commenters suggest that substantial duplication should be defined as 14 weekly prime time hours, the definition used in the Commission's former must-carry rules. Moreover, the duplication should not have to be simultaneous.

The Act defines commercial television stations as being local where the cable system is located within the Area of Dominant Influence of a station. The use of the ADI creates a potentially chaotic situation for cable systems located in counties which shift from one ADI to another in Arbitron's annual reconfiguration. Commenters therefore suggest that the Commission should freeze the ADI market list as of the time when the rules are adopted.

As is the case for NCE stations, the location of a cable system's principal headend is important to the must-carry rules for commercial stations. The Act requires that a good quality signal be delivered to a cable system's principal headend in order to maintain must-carry status. Likewise, a technically integrated cable system serving multiple communities may be located in more than one ADI. A cable system should be considered located only within one ADI. In multiple ADI

situations, the cable operator should be free to choose the ADI in which it will be located. The location of either the system's principal headend or center of system coordinates in the chosen ADI should be considered prima facie evidence.

Commenters agree that there will sometimes be valid reasons to add or delete communities from the local market of a particular television station for must-carry purposes. These reasons should be advanced in a petition for special relief pursuant to the procedures contemplated in the Act. Meanwhile, as the Act states, the status quo should be maintained pending the resolution of any requests for such an adjustment.

No revision to the list of the largest 100 television markets is needed to implement the must-carry rules since the current ADI markets are to be used for determining must-carry rights. Since it is possible that a change in market rankings could have an effect on cable operators' copyright liability, and since it is not "necessary" for the rankings themselves to be updated to implement Section 614 of the Act, the Commission need not and should not update the rankings.

As is the case for NCE stations, Commenters submit that local commercial stations which invoke must-carry status should be entitled to assert syndicated exclusivity and network nonduplication protection only against non-local commercial stations. Moreover, local commercial stations which elect retransmission consent should not be eligible to invoke the syndicated exclusivity and nonduplication rules. When such stations elect to pursue free market negotiations they can bargain for these rights in the marketplace.

Commenters strongly urge the Commission to enact separate definitions for "network" and "substantial duplication." For network, Commenters suggest the definition of a network affiliate should be any station which has entered into an affiliation arrangement for the receipt of programming from an entity meeting the definition of "network" in the Commission's rules. As for "substantial duplication", Commenters suggest the definition

which has been advanced for NCE stations, that is, 14 or more prime time hours per week, whether or not simultaneous.

The requirement to carry program-related material in the vertical blanking interval or on subcarriers "to the extent technically feasible" should not require the cable operator to incur additional costs or to change or add equipment in order to carry such material. Commenters concur with the Commission's suggestion that the test used for copyright purposes is appropriate to determine whether such material is "program-related."

Commenters submit that when stations elect to assert channel positioning rights the cable system should be permitted to resolve conflicts according to a priority structure. To do otherwise would create a chaotic situation for many cable systems because there are many local television stations presently being carried which will continue to be carried under the new regime.

The Act exempts a cable system from carrying a station if a signal of "good quality or a baseband video signal" is not delivered to the cable system's principal headend. The signal measurements set forth in the Act are adequate signal strength benchmarks but the Act states that the signal must be of "good quality". A signal can meet the strength standard and yet be virtually unwatchable, thus of not "good quality". Commenters submit that the Commission should establish a benchmark for the viewability of the picture at the system's principal headend.

II. **Retransmission Consent.**

It is clear that the retransmission consent requirement was intended by Congress to apply to all multi-channel video programmers. Although SMATV and MATV systems are not specifically delineated in the list of examples contained in the statutory language, the definition of a multi-channel video programming distributor is not limited to the examples given and encompasses any person who makes available multiple channels of video programming for sale to subscribers.

The Commission may not exclude MMDS from the definition of multi-channel video programming distributor for purposes of the retransmission consent requirement merely because MMDS operators have been held not to qualify for the Section 111 compulsory copyright license.

The structure of the Act and the legislative history indicate that a limitation to television stations was intended and therefore radio broadcast stations are not included in the retransmission consent requirement.

Commenters urge the Commission to acknowledge that must-carry/retransmission consent rights must be asserted system-wide and not on a community-by-community basis. The express language of the Act clearly indicates that the retransmission consent provisions were intended to apply uniformly throughout a given cable system.

As to technically integrated systems which serve communities located in more than one ADI, the Commission's rules should provide that a station's must-carry election with respect to the local ADI portion of the cable system should automatically be deemed to grant retransmission consent as to any non-ADI community served by the same system.

The Commission's rules must provide for a reasonable transition period to come into compliance with the must-carry and retransmission consent provisions. Because the implementation of both must-carry and retransmission consent will have a substantial disruptive impact on the channel lineups of many cable systems and the established viewing patterns of cable subscribers, a sufficient amount of time to come into compliance with these requirements is necessary. The FCC should require local commercial stations to elect between retransmission consent and must-carry and notify each cable system by a written notice of their election by May 1, 1993 and then by May 1st every three years thereafter. Both rules should then become effective on October 6, 1993. Moreover, the Commission's implementation procedures should specify a default election procedure that will

maintain the status quo in the absence of an affirmative must-carry/retransmission consent election by local stations.

Because manner of carriage and channel positioning requirements are contained in the must-carry sections of the Act and not in the retransmission consent provisions, it is evident that Congress did not intend for such privileges to apply to stations electing retransmission consent. These matters should be a subject for negotiations as part of a retransmission consent agreement.

The Commission suggests that the retransmission consent language in the Act may permit existing or future contractual agreements between broadcasters and program suppliers to deal with retransmission rights. Commenters do not support this interpretation of the statute. Congress intended to grant broadcasters control over the retransmission of their signals. The rights in the underlying programming are separate from the rights to the broadcaster's signal. The compulsory license scheme would remain unmodified because a cable operator cannot claim that retransmission consent by a broadcast station includes the right to the underlying programming, thus a cable operator who receives retransmission consent from a broadcast station must still fulfill the requirements of Section 111. Existing and future program agreements are unaffected as well since program suppliers are compensated through a combination of direct license fees from broadcasters and compulsory license fees from cable operators. The ability to grant retransmission consent by broadcasters changes none of this.

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Fleischman and Walsh, on behalf of Adelphia Communications Corporation; Arizona Cable Television Association; Cable TV of Georgia; Cable Video Enterprises; Coaxial Communications, Inc.; Hauser Communications; Mid-America Cable Television Association; Mount Vernon Cablevision, Inc.; Nashoba Communications Limited Partnership; Pennsylvania Cable Television Association; Prestige Cable TV; Star Cable Associates; Tele-Media Corporation; Weststar Communications, Inc.; and Whitcom Investment Company (collectively, "Commenters"), hereby respectfully submits comments in response to the Notice of Proposed Rulemaking ("NPRM") released by the Commission on November 19, 1992 in the above-captioned proceeding. The participants in

these comments operate cable television systems of various sizes across the country, in areas ranging from rural to urban. State and regional trade associations representing cable television operators are also participants in these comments.

INTRODUCTION

The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "Act") embodies a comprehensive regulatory scheme for the cable television industry. The must-carry and retransmission consent provisions figure prominently in that scheme. Congress was trying to redress what it perceived as a competitive imbalance against television broadcast stations. But Congress was also careful to observe that it did not want to punish cable subscribers by taking away signals which they have received for many years. Therefore, in implementing these statutory provisions, the Commission must proceed with caution lest its rules play havoc with established signal carriage. The interest of the subscribing public must always be put first.

I. MUST-CARRY REGULATIONS.

A. Carriage of Local Non-Commercial Educational Television Stations.

The Act requires the carriage of certain non-commercial educational television ("NCE") stations. Because a separate effective date for this section was not provided in the Act, the Commission assumed that the statutory must-carry requirements for NCE stations became effective on December 4, 1992, the effective date of the Act. However, the Commission

correctly recognizes that there are a number of issues which need to be resolved in the implementation of this carriage requirement. The Standstill Agreement recently concluded by the parties to the various appeals from the must-carry provisions of the Act will afford the Commission, the affected cable operators and NCE stations an opportunity to sort out the issues arising under the must-carry provisions in a timely fashion.[1]

Qualified Local NCE Stations. In footnote 5 the Commission notes that the NCE carriage obligations generally do not conflict with existing rule requirements. The one exception to this noted by the Commission involves the network non-duplication rights of NCE stations. Thus, the Commission stated that as between qualified local NCE stations, the rules will be revised to provide that no network non-duplication requirements will be enforced. Commenters submit that certain other equitable situations should be addressed. First, when an NCE station becomes a must-carry station pursuant to a special relief petition, it should be treated as a qualified local station for these purposes. Second, the Act states that cable systems must continue to carry all NCE stations that were being carried as of March 29, 1990. If such stations substantially duplicate must-carry NCE stations, the cable operator should have the same discretion as to which stations to carry as the

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[1]Turner Broadcasting System, Inc. v. FCC, Civil Action No. 92-2247, et al. (D.D.C. December 4, 1992).

Act provides with regard to qualified local NCE stations. Third, if NCE stations carried as of March 29, 1990, have since been dropped for one reason or another, the provisions of the Act which excuse a cable operator from carrying an NCE station (i.e., if the station does not compensate the cable operator for any additional copyright liability or if a signal of adequate quality is not delivered to the cable system) should both be applicable.

NCE status should be permitted for translators if the parent station is a qualified NCE station. Finally, as to NCE-type stations which operate on commercial allocations, Commenters believe that NCE status should not be automatic but instead should be subject to a petition by the station and ad hoc determination by the Commission.

Principal Headend. Must-carry status is granted to an NCE station if the reference point of the NCE station's community of license is within 50 miles of the principal headend of the cable system, or if the station's grade B service contour covers the principal headend of the cable system. Moreover, a "good quality" signal must be delivered to the principal headend to maintain must-carry status. Thus, the location and definition of the term "principal headend," which is not defined in the Act, is a crucial issue for making the determination of whether a qualified NCE station must be carried.

The Commission correctly proposes to permit cable operators to choose the location of their own principal headends. As the Commission knows, many cable systems have multiple headend facilities. The choice should be left to a good faith determination by each cable operator. The designation of a cable operator's principal headend could be included on an amended Form 320 which would require each system to note the coordinates of its chosen principal headend. The location of a system's principal headend should be permitted to be changed upon a reconfiguration of the cable system by the cable operator. This could happen, for example, as a result of a cable system rebuild, when a cable system acquires an abutting cable system, or if headend facilities are consolidated through interconnection.

Finally, with regard to the reference points in Section 76.53 of the Commission's rules, Commenters believe that it would be helpful to supply the coordinates for every community where an NCE station is allocated. This would require the addition of some communities and reference points to Section 76.53.

Signal Carriage Obligations. The Commission notes that it must define when programming is "substantially duplicated," for purposes of the medium-sized system exception regarding state educational networks and for large-sized systems. Commenters submit that the definition should be the same for both purposes. There is no reason to have different definitions and

the use of different definitions will only cause confusion. It is our belief that "substantially duplicated" is a less demanding standard than the use of the term "predominantly" which is used in the definition of a municipal NCE station. Therefore, the use of the proposed 50% duplication standard is excessive. In its place, Commenters suggests that substantial duplication should be defined as 14 weekly prime time hours, the definition used in the Commission's former must-carry rules.[2] In addition, the duplication should not have to be simultaneous.

Procedural Issues. The Commission raises certain procedural questions in paragraph 14 of the NPRM. NCE stations carried pursuant to the must-carry rules should be identified pursuant to the same procedures as those used for commercial stations. Commenters have no objection to keeping a list of the stations carried in the public file so long as there is no monetary sanction for noncompliance. Likewise, an NCE station wanting to know which NCE stations are carried by a system should be able to receive an answer to that question from the system in writing.

One final point that deserves mention is that although the Act concerns itself with which NCE stations must be carried, the Commission may wish to reiterate that a cable system is free to carry any NCE stations which it chooses to carry, which is clearly consistent with Congressional intent in declining to

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[2]47 C.F.R. §76.5(j)(1984) (deleted).

extend retransmission consent to NCE stations. Moreover, it is consistent with the language in Section 614(a) which recognizes that carriage of commercial stations other than those which must be carried is permissible, subject to Section 325(b), of course.[3]

B. **Carriage of Local Commercial Television Stations.**

Location of a Cable System. The location of a cable system's principal headend is important to the must-carry rules for commercial stations in a different way than for NCE stations. Here it is necessary under the statute in order to be able to measure whether a good quality signal is being delivered to the cable system. The Act requires that a "good quality" signal be delivered to a cable system's principal headend in order to maintain must-carry status. As stated above in our comments on the NCE rules, the cable operator should be charged with the obligation of identifying the location of its principal headend.

As to market location, the Commission correctly notes that a cable system may be located in more than one ADI because it is a multiple community system which is technically integrated. In situations where an integrated cable system serves communities in more than one ADI, the cable system should be considered located only within one ADI. To rule otherwise

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[3]Along the same lines, Section 614(a) exempts cable systems with 12 or fewer channels and less than 300 subscribers from any commercial must-carry obligations. The Commission should adopt the same exemption for NCE must-carry. No carriage burdens should be placed on such tiny systems.

would place an undue must-carry burden on the cable system. The cable operator should be able to choose the ADI in which it will be considered located.[4] If this choice is contested, the location of either the system's principal headend or center of system coordinates (as reported to the FCC in Section 76.615 filings) in the chosen ADI should be considered prima facie evidence in favor of the cable operator. Any remaining anomalies can be dealt with through the local market adjustment procedures raised in paragraphs 18 through 20 of the NPRM.

Television Market Definition and Status. With regard to the definition of a television market, the Act refers to a section of the Commission's rules which uses Arbitron's Area of Dominant Influence ("ADI") definition of a market. Under that definition, every county in the contiguous United States is assigned to only one ADI. These assignments are based on the shares of the county's total estimated television viewing hours. The market whose home stations achieve the largest total share gets that county assigned to its ADI. As the Commission notes, some ADIs may be as small as one county, while other ADIs are very large. Moreover, ADIs are sometimes influenced by cable carriage of signals in distant counties where the signals could not be received off the air.

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[4]Because of the May 1, 1993, initial election date advocated by Commenters, cable operators will have to declare their ADI location within 7 days of the release of the rules in this docket in order to give broadcast stations in the chosen ADI enough time to make their election.

Although ADIs are modified annually by Arbitron, Commenters submit that the regulatory scheme requires considerably more certainty. ADI markets should be frozen for Commission purposes, i.e., the most current ADI listing as of the date the rules are adopted should be used. To allow changes to be made every time Arbitron shifts a county from one ADI to another would create a chaotic situation for cable systems located in those counties. It also puts the regulatory fate of cable systems in private hands, hands which are making ADI changes for reasons unrelated to the 1992 Cable Act. Moreover, the Arbitron books are private property which cost a good deal of money to purchase. As the Commission knows, Arbitron recently asked the Commission to restrict the use of its 1992 edition in the public reference room due to concerns regarding potential unauthorized duplication of ADI maps. The Commission should consider other ways to disseminate the necessary information to cable systems, e.g., arranging with Arbitron for the Commission to publish the markets and counties in the rules.

Commenters agree that there will sometimes be valid regulatory reasons for a community to be considered as being located in one station's market rather than another. These reasons should be advanced by a cable operator or a television broadcast station in a petition for special relief pursuant to the procedures contemplated by Congress in Section 614(h)(1)(C). The Commenters believe that market

determinations should only be changed by the special relief process once the Commission's rules have been placed into effect. Meanwhile, as the Act states, the status quo should be maintained pending the resolution of any request for a market change. The only exception to this rule would be where the cable operator and the directly affected broadcast station are in agreement over the relief requested in the petition. In that case, the relief asked for could be conditionally implemented pending Commission action on the request.

In paragraph 20 of the NPRM the Commission seeks comment on whether the criteria for market change petitions set forth in Section 614(h)(1)(C) should be supplemented. In particular, the Commission raises a question regarding the usefulness of a specific mileage zone. Commenters believe that a mileage zone does not necessarily indicate a station's actual relationship to a particular cable community. A principal theme of the statutory criteria is a community of interest between the station and the cable community. The viewability of the signal would seem to be more relevant to this theme than a mileage zone. Commenters therefore suggest that the Commission supplement the fourth statutory criterion ("viewing patterns" in the cable community) by using the station's predicted Grade B service contour and the significant viewing standard of Section 76.54 of the rules as further indicia of the local nature of a station.

Any change in a station's market determination should not require the displacement of existing services in order to accommodate new must-carry signals. As is the case elsewhere in the must-carry requirements, such stations could be given priority for the first available channel on the basic tier, i.e., triggered by the expansion of a system's channel capacity or reconfiguration of services. Finally, if a station achieves must-carry status via the special relief process, Commenters submit that it should be treated exactly like a "local" station, i.e., no non-duplication or syndicated exclusivity requests by other local stations should be allowed and the cable system should be able to invoke the substantial duplication standard in making its carriage decision.

Market List Changes. As the Commission notes in paragraph 21 of the NPRM, the Act indicates that the Commission should make "necessary revisions" to Section 76.51 of the Commission's rules, the list of the largest 100 television markets together with their designated communities. No revision to this list is needed to implement the must-carry rules since the current ADI markets are to be used for determining must-carry rights. As the Commission notes, if the market rankings are updated this could affect cable operators' copyright liability pursuant to Section 111 of the Copyright Act of 1976, which is outside the Commission's jurisdiction. Thus, Commenters submit that, since it is not "necessary" for the rankings themselves to be updated to implement Section 614, the Commission need not and should

not update the rankings. If, for some reason, the Commission decides that the list must be updated to change market rankings, this should be done as infrequently as possible and the Commission should make it clear that the changes are not intended to have copyright implications. The U.S. Copyright Office would be the appropriate body to ascertain the copyright implications of any such change in FCC rules.

The Commission might wish to update the list, however, to add new designated communities to existing markets for stations which have gone on the air since the list was last revised. For example, Star Cable Associates has a pending request to add Alvin, TX to the Houston market which was filed over two years ago. All of the factors established in prior Commission decisions amending Section 76.51 favor the addition of Alvin to the Houston market. Currently, because Alvin is a "smaller" market with one licensed independent television station, systems within Alvin's 35-mile zone, but outside Houston's 35-mile zone, cannot carry any distant independent stations without incurring a 3.75% copyright fee.

In paragraph 23 of the NPRM, the Commission raises the issue of the effect of market designation or Section 76.51 changes on the syndicated exclusivity and non-duplication rules. Changes in Section 76.51 market rankings would affect the extent of non-duplication protection if a market moved on or off the major market list. Section 76.92 of the rules provides an expanded 20 mile zone of protection for small

market television stations. A change in market rank could increase or decrease a cable system's non-duplication obligations. This is yet another reason to resist changing the market rankings.

Commenters submit that local commercial stations which invoke must-carry status, whether as an ADI station or pursuant to a special relief petition, should be entitled to assert syndicated exclusivity and network non-duplication protection only against non-local commercial stations. This approach would be consistent with the Commission's proposal for NCE stations. On the other hand, local commercial stations which elect retransmission consent should not be eligible to invoke the syndicated exclusivity and non-duplication rules. When such stations elect to pursue free market negotiations, they can bargain for any perceived loss in the value of program exclusivity. In addition, those stations which do grant retransmission consent can require such protection as part of the price for their consent. The ability to engage in marketplace negotiations should obviate the need for governmental regulatory protection. Conversely, if retransmission consent is not granted, a station which is not carried should not be able to deprive the public of programming from other stations. If a local station wants the benefits of the regulatory protection contained in the Commission's rules, it should elect must-carry status.

Selection of Signals. The Commenters disagree with the Commission's proposal in paragraph 26 to adopt a definition of "network" which incorporates the concept of "substantial duplication." Congress used two separate terms and they should be defined separately. An example of how a single definition can produce the wrong result best illustrates this point. If a cable system is carrying an NBC affiliate and an ABC affiliate, the system might also be required to carry an NBC/ABC "cherry picker" because the cherry picker may not "substantially duplicate" either of the full affiliates. However, the cherry picker clearly duplicates what the system is already carrying and should not have to be carried. Thus, Commenters strongly urge the Commission to adopt separate definitions for "network" and "substantial duplication."

For "network," Commenters suggest that the definition of a network affiliate should be any station which has entered into an affiliation arrangement for the receipt of programming from an entity meeting the definition in Section 73.3613(a)(i) of the Commission's rules in effect on October 6, 1992. As to "substantial duplication," Commenters suggest the definition which was advanced above for NCE stations, i.e., 14 or more prime time hours per week, whether or not simultaneous. The reason that non-simultaneous programming must be considered duplicative is that under the syndicated exclusivity and network non-duplication rules the cable operator must black out such programming upon request.

As for carriage of low power television stations, Commenters believe that the issues are not susceptible to detailed rules and, therefore, case-by-case review should be required to determine must-carry rights for LPTV stations.

Finally, paragraph 31 deals with sales presentations and program length commercials. Commenters take no issue with the proposed interim definition of a home shopping station. However, the question of what constitutes a "program length commercial" or a "sales presentation" is not dealt with in the interim definition. Commenters suggest that at least during the interim period while the Commission is conducting a rulemaking on this issue, the good faith determination of a cable operator should be controlling. In grappling with these definitions, the Commission might wish to consider the definition of commercial matter used in its children's advertising rules. Section 76.225 defines commercial matter as "airtime used for the offering of goods or services for sale."

C. **Manner of Carriage.**

Content to be Carried. The Act requires the carriage of program-related material in the vertical blanking interval or on subcarriers "to the extent technically feasible." Commenters suggest that, at a minimum, this provision does not require the cable operator to incur additional costs or to change or add equipment in order to carry such material.

As to the issue of when material transmitted on the vertical blanking interval or on subcarriers is "program-

related," Commenters concurs with the Commission's suggestion that the test used for copyright purposes is appropriate. See WGN Continental Broadcasting Co. v. United Video, Inc., 693 F.2d 622 (7th Cir. 1982). Under that test, material would be considered program-related if it "is intended to be seen by the same viewers as are watching the [particular program], during the same interval of time in which that [program] is broadcast, and as an integral part of the . . . program." Id. at 626. Thus, for example, subtitles in a different language of the program itself would be related, but a listing of upcoming programs on the station would not.

Section 615(g)(1), in requiring carriage of program-related material in the VBI or on subcarriers on NCE stations, adds the language "that may be necessary for receipt of programming by handicapped persons or for educational or language purposes." This additional language should be read as explaining what program-related means in an educational context, not as expanding the meaning of program-related for NCE stations. Indeed, it can be read as providing a narrower meaning of program-related.

Channel Positioning. With regard to channel positioning, the Act offers three possible options for commercial signals, that is, the station's actual over-the-air channel number, the cable channel on which the station was carried on July 18, 1985, or the cable channel on which the station was carried on January 1, 1992. The Act also allows a cable system and a

broadcast station to mutually agree upon a channel position. In the case of NCE stations the options are the station's over-the-air channel number, or the cable channel on which the station was carried on July 19, 1985. Commenters submit that once a station elects to assert channel positioning rights, the cable system should be permitted to choose among the statutory options in the event of conflicting requests.[5] To hold otherwise would create a confusing and often chaotic situation for many cable systems. This is because there are many local television stations which are presently being carried and which will continue to be carried under the new regime. These stations' present channel positions are often the result of negotiation and agreement. Rigid priorities exercisable solely by a requesting station would upset many of these arrangements.

There are a number of situations where these priorities should not be followed. A station should not be able to require a cable system to carry it on a channel number which is not offered as part of a basic tier, e.g., in the case of most UHF channels. Moreover, stations should not be allowed to force the cable operator to carry it on different channels on the same technically integrated system. In addition, there are often technical reasons why certain or all of the statutory

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[5]Many franchises dictate channel positioning and, indeed, which signals must be carried. The Commission must clarify that, in these circumstances, the Act preempts such franchise provisions. Cf. Cable Communications Policy Act of 1984, 47 U.S.C. §556(c) (1984) (non-grandfathered franchise provisions inconsistent with the statute are preempted).

options are technically impossible or legally problematic. For example, there are circumstances where strict compliance with channel positioning requirements would cause a violation of the anti-buy through provision unless significant scrambling of signals was accomplished. This not only is a costly solution, but also runs counter to Congress' antipathy to scrambling. These are but a few of the reasons for permitting cable systems to have some flexibility to choose among the allowable alternatives for channel positioning. Finally, the Commission must be prepared to resolve conflicts in an equitable manner without applying the statute to the letter.

Signal Quality. The signal quality standards recently adopted by the Commission clearly satisfy the requirements of Section 614(b)(4)(A).[6] Moreover, the cable operator should not be held accountable if the broadcast signal quality as received at the system's headend is not as good as the signal received via satellite for cable networks. As long as local television stations are carried without material degradation caused by the cable operator, the statute is satisfied.

Paragraph 36 of the NPRM raises a separate but related issue, namely, the exemption from must-carry obligations if a signal of "good quality or a baseband video signal" is not delivered to a cable system's principal headend. A signal level standard is set out in the Act for commercial stations

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[6]47 C.F.R. §76.605; see also Report and Order in MM Docket Nos. 91-169 and 85-38, 7 FCC Rcd 2021 (1992), recon. Memorandum Opinion and Order, FCC 92-508, released November 24, 1992.